COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS **BOARD NO. 052199-97**

Christopher Williams	Employee
Williams Forms, Inc.	Employer
U.S. Fire Insurance	Insurer

REVIEWING BOARD DECISION
(Judges Carroll, Wilson and Maze-Rothstein)

APPEARANCES
Charles Donoghue, Esq., for the employee
Joann Walter, Esq., for the insurer at hearing
Judith B. Gray, Esq., for the insurer on appeal

CARROLL, J. The employee appeals from an administrative judge's corrected decision which, although awarding the employee the one year of § 35 partial incapacity benefits sought from the November 25, 1997 date of injury until November 25, 1998, denied § 50 interest on the awarded benefits.[1] The employee contends that the judge was in error to deny interest. We agree, and order that the insurer pay the § 50 interest sought by the employee.

The facts pertinent to this appeal are straightforward. In the original decision in this liability claim, the administrative judge explicitly found that an industrial injury occurred on November 25, 1997. (Dec. 5.) He then erroneously ordered benefits only from November 25, 1998. (Dec. 12.) Approximately eleven months after the judge filed his original decision in this matter, the employee filed a motion for clarification regarding the above-noted discrepancy between the judge's findings and his order of payment. The

[1] The actual corrected decision is silent as to interest but, in a February 27, 2001 cover letter to the corrected decision, the administrative judge seems to be of the impression that he has discretion to not award interest because he specifically denied interest to the employee. The parties accept the cover letter as part of the corrected decision. (Employee Br. 2-3; Insurer Br. 3.) Section 50 interest is not discretionary, it is self-operative. Le v. Boston Steel & Mfg. Co., 14 Mass. Workers' Comp. Rep. 75 (2000); Charles v. Boston Family Shelter, 11 Mass. Workers' Comp. Rep. 203, 205 (1997).

judge responded with a corrected decision noting a scrivener's error and awarded the benefits sought, but denied § 50 interest on those benefits. The insurer paid the § 35 benefits awarded by the corrected decision, and the employee appealed on the issue of § 50 interest that he alleged was due.

General Laws c. 152, § 50 provides:

> Whenever payments of any kind are not made within sixty days of being claimed by an employee, dependent or other party, and an order or decision requires that such payments be made, interest at the rate of ten percent per annum of all sums due from the date of the receipt of the notice of the claim by the department to the date of payment shall be required by such order or decision. Whenever such sums include weekly payments, interest shall be computed on each unpaid weekly payment.

The statute "should be given effect consistent with its plain meaning and in light of the aim of the Legislature unless to do so would achieve an illogical result." Sullivan v. Town of Brookline, 435 Mass. 353, 360 (2001). Plainly, the § 35 benefits ordered in the corrected decision in 2001 were a "payment[] of any kind . . . not made within sixty days of being claimed" by the employee in 1998. There is no doubt that the insurer had the use of the § 35 benefits determined to be due the employee for that entire time, and that the employee was denied the use of that money for the same period. Thus, since interest is intended to remedy just this disparity, we agree with the employee that the judge erred by not awarding the interest. See City Coal Co. of Springfield v. Noonan, 434 Mass. 709, 716 (2001); Nardone v. Patrick Motor Sales, Inc., 46 Mass. App. Ct. 452, 454 (1999).

The insurer's only argument against the employee's assertion on appeal is that the judge had no jurisdiction to order payment of additional benefits in his corrected decision. The insurer's argument is of no avail, because it did not appeal the judge's corrected decision. As a result, the insurer has no standing to complain of jurisdictional irregularities, if any, in the judge's award of benefits. See Saugus v. Refuse Energy Sys. Co., 388 Mass. 822, 831 (1983) ("failure to take a cross appeal precludes a party from obtaining a judgment more favorable to it than the judgment entered below"); Giannelli v. DAKA, Inc., 12 Mass. Workers' Comp. Rep. 379, 381 (1998) ("insurer did not appeal

the decision thereby signifying it was content with the decision of the hearing judge. It therefore had no standing to raise the issue"). We do not consider that there was any jurisdictional irregularity, in any event. See Howard v. Beacon Constr., 11 Mass. Workers' Comp. Rep. 290, 291 (1997)(judge does not lose power to rule on motion after rendering decision).

Accordingly, the insurer is ordered to pay interest pursuant to G.L. c. 152, § 50, on the § 35 benefits ordered in the judge's corrected decision of February 27, 2001. Pursuant to § 13A(6), the insurer is ordered to pay employee's counsel a fee of $1,285.63.

So ordered.

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Martine Carroll
Administrative Law Judge

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Sara Holmes Wilson
Administrative Law Judge

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Susan Maze-Rothstein
Administrative Law Judge

Filed: **April 2, 2002**
MC/jdm